IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4251 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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YASIN ILIYASBHAI SHAIKH - Petitioner(s)
Versus
COMMISSIONER OF POLICE FOR CITY OF AHMEDABAD & 2 - Respondent(s)

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Appearance :

MR ANIL S DAVE for Petitioner(s) : 1,MS NITUBALA BHATIYA for Petitioner(s) : 1,
MR APURVA DAVE GOVERNMENT PLEADER for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 28/11/2007

ORAL JUDGMENT

1.0 This is a petition by detenu through his wife, by which he has challenged the order of

detention dated 12.01.2007 passed by Commissioner of Police, Ahmedabad under sub-Section (2) of Section 3 of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'PASA Act').

2.0 Learned Advocate for the detenu has invited my attention to the order of detention dated 12.01.2007 as well as grounds supplied therein, by which detenu was detained and sent to District Jail, Surat. As the grounds of detention eleven criminal cases have been shown as registered against the detenu which pertain to 'theft'.

2.1 Learned Advocate for the detenu has submitted that on the basis of the aforesaid criminal cases registered against the detenu, the Authority has come to the conclusion that the activities of the detenu are detrimental to the maintenance of 'public order' and, hence, detenu falls within the definition of 'dangerous person' within the meaning of Section 2(c) of the PASA Act. The Authority has, therefore, passed the

order of detention against the detenu.

2.2 Learned Advocate for the detenu has further submitted that the detaining Authority has arrived at subjective satisfaction on the basis of the irrelevant material. He has further submitted that the incidents which have been narrated above, there may be only breach of 'law and order' situation and not 'public order'. In support of the same learned Advocate for the detenu has placed reliance on a decision of the Apex Court in the case of ***"Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police & Ors."*** reported in 1995 (2) GLR 1268 wherein at Para-8, the Apex Court has observed as under,

> "**8.** The Act has defined "dangerous person" in clause © of Sec.2 to mean a person who either by himself or as a member or leader of a gang habitually commits or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Penal Code or any of the offences punishable under Chapter V of the Arms Act. The expression 'habit' or 'habitual' has, however, not been defined under the Act. According to the *The Law Lexicon by P. Ramanatha Aiyar, Reprint Ed. (1987), p. 499,* 'habitually' means constant, customary and addicted to

specified habit and the term habitual criminal may be applied to anyone who has been previously convicted of a crime to the sentences and committed to prison more than twice. The word 'habitually' means 'usually' and 'generally'. Almost similar meaning is assigned to the words 'habit' in *Aiyar's Judicial Dictionary, 10th Edn., p. 485*. it does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a “dangerous person” unless there is material suggesting his complicity in such case which lead to a reasonable conclusion that the person is a habitual criminal. In *Gopalanchari v. State of Kerala,* AIR 1981 SC 674 this Court had an occasion to deal with expressions like “bad habit”, 'habitual', 'desperate', 'dangerous', and 'hazardous'. This Court observed that the word habit implies frequent and usual practice. Again in *Vijay Narain Singh v. State of Bihar,* 1984 (3) SCC 14 this Court construed the expression 'habitually' to mean repeatedly or persistently and observed that it implies a thread of continuity stringing together similar repetitive acts but not isolated, individual and dissimilar acts and that repeated, persistent and similar acts are necessary to justify an inference of habit. It, therefore, necessarily follows, that in order to bring a person within the expression “dangerous person” as defined in clause © of Sec.2 of the Act. There should be positve material to indicate that such person is habitually committing or attempting to commit or abetting the commission of offences which are punishable under the commission of offences which are punishable under Chapter XVI or Chapter XVII of I.P.C. or under

> Chapter V of the Arms Act and that a single or isolated act falling under Chapter XVI or Chapter XVII of I.P.C. Or Chapter V of the Arms Act cannot be characterised as a habitual act referred to in Sec.2(cA) of the Act.

2.3 Learned Advocate for the detenu has further placed reliance on a Division Bench judgment of this Court in the case of ***"Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat & Others"*** reported in 2000 (1) GLH 393 wherein at Para-22, it was held under,

> **"22**. So far as the case against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining Authority. Regarding eleven statements, **having taken into account the law laid down by the Supreme Court in Ram Manohar Lohia Vs. State of Bihar reported in AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us hereinabove, the case falls under the maintenance of 'law and order' and not 'public order'.** The subjective satisfaction arrived at by the detaining Authority, therefore, cannot be said to be legal, valid and in accordance with law. Since, in the facts and circumstances, an order of detention could have been passed by the detaining Authority for maintenance of 'public order', the order deserves to be quashed and is hereby set aside. The detenu is ordered to be set at liberty

> forthwith unless required in any other case. Appeal is accordingly allowed. No order as to costs."

3.0 On the contrary, learned A.G.P. has supported the order of detaining Authority and has submitted that registration of the aforesaid criminal cases and statements of witnesses against the detenu would go to show that detenu was indulging in such serious activities which can be said to be prejudicial to the maintenance of 'public order'. Learned A.P.P. further submitted that there is sufficient material before the detaining Authority to pass the order of detention and no interference is called for by this Court.

4.0 Heard learned Counsel for the parties and after perusal of the record, I am of the view that the detaining Authority has passed the order of detention without there being any credible or cogent material on record in this behalf. I have considered factual and legal aspects emerging from the record of the petition and considered the rival submissions. Taking into consideration,

facts and circumstances of the case and allegations made against the detenu it can be, at the most, said that there is disturbance of only 'law and order' and not 'public order'. Therefore, in view of the decisions of the Apex Court in the case of ***"Mustakmiya Jabbarmiya Shaikh"***(Supra) as well as judgment of this Court in the case of ***"Ashokbhai Jivraj @ Jivabhai Solanki"***(Supra), the order of detention cannot be sustained and deserves to be quashed and set aside.

5.0 In the result, this petition is allowed. The order of detention dated 12.01.2007 passed by Commissioner of Police, Ahmedabad is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in connection with any other case by the Authority. Rule is made absolute. Direct service is permitted.

(M.D. Shah,J.)

Umesh/